ASEAMLEASE BHD.

v.

THE OWNERS OF & OTHER PERSON INTERESTED IN THE SHIP OR VESSEL "SOERAYA EMAS"

HIGH COURT, SINGAPORE
M KARTHIGESU J
[HC ADMIRALTY IN REM NO. 51 OF 1989]
13 SEPTEMBER 1991

SHIPPING: *Consequences of entering a summary judgment under the O. 14 procedure in an admiralty action in rem - Admiralty action in personam or in rem not excluded from O. 14 judgment - Consequences of defendant entering an appearance in admiralty actions in rem - Requirements in The Gemma per AL Smith LJ - Defendants only entered appearance but did not file defence - Whether consent judgment binds interveners who intervened after consent judgment entered - Court has no jurisdiction to set aside consent judgment in relation to plaintiffs and defendants - Right to intervene governed by O. 70 r. 16 Rules of the Supreme Court [Sing] - Locus standi of interveners - Merits of challenge to plaintiffs' claim - Opportunity to be heard - High Court (Admiralty Jurisdiction) Act [Sing], ss. 3(1)(c), (d), (m), 4(2), 4(4)(a) - Rules of the Supreme Court [Sing], O. 14 r. 2(8), O. 70 rr. 16(1), (2), (3), (4), 20(3), (4).*

On 14 February 1989, the plaintiffs commenced an admiralty action *in rem* as mortgagees against the "owners of and/or other persons interested in the ship or vessel *Soeraya Emas*" (these proceedings). The plaintiffs' claim was for the sum of $624,721.35 being the amount outstanding to them, by the defendants shipowner, of the purchase price of the *Soeraya Emas* (SE) together with interest. The writ in "these proceedings" was served on SE on 20 February 1989 while she was still under arrest; SE was arrested by the sheriff on 23 January 1989 pursuant to a writ filed by Singapore Slipway (SS) for work done and materials supplied for repairs to SE (*In Rem* 245). Following this arrest, several other claimants asserted claims against SE, including the plaintiffs, Inter Maritime (IM) and Hang Sing (HS), who were all given leave to intervene.

The defendants also entered an appearance in "*In Rem* 245" but did not take any of the steps referred to in *"The Gemma"* per AL. Smith LJ. On 4 March 1989, SS obtained the consent of the defendants, the plaintiffs and HS, that SS be at liberty, *inter alia*, to sell SE, for the proceeds of sale to be deposited with the sheriff and for the order of priority of claims to be determined after the expiration of 30 days from the first day of proceeds of sale being deposited into Court. SS obtained summary judgment on 8 April 1989 under O. 14 of the Rules of the Supreme Court (RSC). SE was sold for $1.04 million.

In "these proceedings", SS and the defendants entered appearance as interveners. On 21 July 1989, the plaintiffs obtained summary judgment under O. 14 of the RSC whereby the defendants consented to the judgment of the money claim without raising any defences by affidavit (the said order). On 10 August 1989, the plaintiffs applied by motion *In Rem* 245 that their claim ranked above all others. IM then intervened and sought an order that the said order and any judgment entered pursuant to the said order be set aside or that the said order was not binding on IM.

The plaintiffs stayed their application and on 3 April 1990, the Assistant Registrar ruled that the Court had no jurisdiction to set aside a consent judgment and that IM had no *locus standi* in "these proceedings" and dismissed IM's prayers. IM appealed and on 12 July 1991, IM moved the Court in *In Rem* 245 for an order that the plaintiffs' determination of priority of their claim be stayed pending their appeal against the decision of the AR. The plaintiffs' motion was adjourned *sine die* with liberty to restore. This is the decision on IM's appeals.

Held:

[1] The admiralty procedure for entering a judgment in default of appearance as provided by O. 70 r. 20(3) and in default of defence as provided by O. 70 r. 20(4) of the RSC is well designed to protect the interests of all persons having an interest in the *res* and will undoubtedly be a judgment *in rem* against the *res.* A mortgage claim in an action *in rem* which falls under ss. 3(1)(c) and 4(2) of the High Court (Admiralty Jurisdiction) Act (the Act), is a secured claim and ranks high in the order of priority of claims.

[2] Once a defendant in an admiralty action *in rem* has entered an appearance in such action, he has submitted himself personally to the jurisdiction of the Admiralty Court, and the result of that is that, from then on, the action continues against him not only as an action *in rem* but also as an action *in personam*. An admiralty action *in rem* does not cease to be an admiralty action *in rem* simply because the defendant shipowner had entered an appearance. An admiralty action *in personam* or *in rem* is not excluded from the scope of O. 14.

[3] When a shipowner defendant enters an appearance in an admiralty action *in rem* he does so for one or all of the three reasons referred to by A.L. Smith LJ in *The Gemma*. If he does not dispute the claim and that claim or the totality of the claims against his ship exceeds the value of his ship it would be most inadvisable for him to enter an appearance as by doing so he makes himself personally liable to the full extent of the judgment or judgments entered after appearance. If he does not enter an appearance and allows the admiralty action *in rem* to proceed in default of appearance he cannot be made personally liable at all as the claims are enforceable only against the ship or the proceeds of sale of that ship.

[4] The learned Assistant Registrar failed to appreciate this important principle; had he appreciated it he would have not fallen into the error of applying the principles applicable solely to the setting aside of consent judgments in non-admiralty civil actions and confusing the standing of IM as intervener in "these proceedings".

[5] In so far as IM were concerned "these proceedings" were and still are an admiralty action *in rem* but in so far as the defendants are concerned, by reason of their appearance and albeit by their consent, a judgment has been entered against them for which they are also personally liable.

[6] Therefore, the Court order of 21 July 1989 giving the plaintiffs leave to enter a final judgment against the defendants binds only the plaintiffs and the defendants. The order being made by the consent of the defendant cannot be set aside by the defendants. The Court does not have jurisdiction to set aside the consent judgment.

[7] However, IM had not then entered upon "these proceedings" and could not therefore have consented. Since "these proceedings" still remain an admiralty action *in rem vis a vis* all persons having an interest in SE except the defendants, the right to intervene must be governed by O. 70 r. 16 of the RSC. The right to intervene as provided by this rule is consonant with the nature of admiralty proceedings *in rem* since a judgment entered *in rem* binds not only the defendant but all other persons who have an interest in the *res* (O. 70

r. 16(1)). Such interest need not and generally does not have anything to do with the original subject matter of the action, or the matter in dispute which are essential requirements in non-admiralty or ordinary civil actions.

[8] A person who has been given leave to intervene in an admiralty action *in rem* does not prosecute his claim in that action. He protects his interest in the property by defending the action *in rem*. In doing so he will be permitted to set up such defences which the owners of the ship could have set up had they defended the action.

[9] In "these proceedings", IM intend to challenge the validity of the mortgage on which the plaintiffs' claim against SE is founded. Based on their affidavits, the contentions of IM have merit and they have *locus standi* in "these proceedings" for if they succeed in challenging the validity of the mortgage their claim will not rank after the plaintiffs' claim with the result that they have greater certainty of having their claim met in full out of the proceeds of sale.

[10] The investigation into the merits of a plaintiff's claim when he chooses to proceed by way of a summary judgment under O. 14 when a defendant in an admiralty action *in rem* has entered as appearance is essential and is within the spirit of entering default judgments as provided by O. 70 r. 20(3) and (4) of the RSC.

[12] Additionally on the facts and circumstances of "these proceedings" natural justice also demands that IM should be given an opportunity to be heard, and in "these proceedings" IM have defences to the plaintiffs' claim and should be allowed to raise them and it cannot be seen how the plaintiffs can be prejudiced thereby.

[13] The opening up of O. 14 proceedings in admiralty *in rem* actions can, if not watched carefully, lead to abuse.

[Appeals of IM allowed with costs; the whole of the Court order made in "these proceedings" on 21 July 1989 and any judgment entered pursuant thereto set aside; IM to file a defence to plaintiff's claim within 21 days and to serve same on every other party to these proceedings.]

Cases referred to:
Ainsworth v. Wilding [1896] 1 Ch 673 ***(cit)***
Emeris v. Woodward [1898] Ch 185 ***(cit)***
The August 8 [1983] 2 AC 450 ***(foll)***
The Byzantion [1922] 16 ASP 19 ***(cit)***
The Dictator [1892] 304 ***(cit)***
The Dowthorpe [1843] 2 W ROB 73 (166 ER 682) ***(cit)***
The Eternal Peace [1985] 1 LLLR 136 ***(cit)***
The "O. Sambaur" No.1 and No.2 Winmore Corporation Ltd. v. The Owner of L.S.T. "O. Sambaur" [1958] MLJ 85 ***(cit)***

Legislation referred to:
High Court (Admiralty Jurisdiction) Act [Sing], ss. 3(1)(c), (1)(d), (1)(m), 4(2), 4(4)(a)
Rules of the Supreme Court [Sing], O. 14 r. 2(8), O. 70 rr. 16(1), (2), (3), (4), 20(3), (4)

For the interveners/appellants - Anjali Iyer
For the plaintiffs/respondents - Lim Yong
For the interveners - Thomas Tan

JUDGMENT

M Karthigesu J:

The plaintiffs commenced this admiralty action *in rem* (to which I shall refer as "these proceedings") against the "owners of and or other persons interested in the ship or vessel *Soeraya Emas"* on 14 February 1989. The plaintiffs' claim as disclosed by the statement of claim endorsed on the writ of summons is as mortgagees of the *Soeraya Emas* and is as follows.

By a memorandum of agreement dated 16 December 1985 the plaintiffs who are a Malaysian registered company having their registered office at 15th Floor, MUI Plaza, Jalan P. Ramlee, Kuala Lumpur agreed to sell their vessel "Kolim Duta" (now re-named *Soeraya Emas*) and for convenience referred to hereafter as *(Soeraya Emas)* to Perkapalan Emas Sendirian Berhad (Perkapalan Emas) also a Malaysian registered company having their registered office at Lot 290 (1st Floor) s. 10, Jalan Satok, Kuching, Sarawak for $2,170,000 of which the sum of $400,000 referred to as a "deposit" was said to have been paid and receipt acknowledged by the plaintiffs by the said memorandum of agreement. The said memorandum of agreement provided that the balance of the purchase price of $1,770,000 was to be paid by way of 42 monthly instalments in the amount and manner provided for in the schedule annexed thereto and forming part thereof. The first of these instalments was to be paid on 15 October 1985 and each subsequent instalment on the 15th day of each succeeding month. The said memorandum of agreement provided that the instalment payments were inclusive of interest at the rate of 9.7821% per annum flat on the balance sum. There was also a provision that in the event of default in the payment of any one of the said monthly instalments the plaintiffs would be entitled to demand for the payment of the outstanding purchase price and that interest at the rate of 1.5% per month would be charged on the amount outstanding to the date of payment (paras. 1 and 2 of the statement of claim).

The statement of claim further pleaded a collateral deed of covenant also dated 16 December 1985 made between the plaintiffs and Perkapalan Emas whereby Perkapalan Emas agreed to execute a first priority statutory mortgage of the *Soeraya Emas* in favour of the plaintiffs to secure the payment of the outstanding purchase price and all other monies and liabilities covenanted to be paid by Perkapalan Emas to the plaintiffs. The said deed of covenant provided, *inter alia,* that in the event the *Soeraya Emas* was arrested seized or taken possession of by any Court and was not released from such arrest or seizure within 7 days or in the event Perkapalan Emas shall default in the payment of any one of the said monthly instalments the full outstanding purchase price together with interest thereon and all other monies thereby secured shall become immediately due and payable; the plaintiffs shall forthwith be entitled to enforce and exercise all the powers and remedies as mortgagees of the *Soeraya Emas* and; the plaintiffs may sell the *Soeraya Emas* for such price or consideration and on such terms as the plaintiffs shall in their discretion determine (paras. 3 and 4 of the statement of claim).

By para. 5 of the statement of claim the plaintiffs averred that Perkapalan Emas duly executed and registered the said first priority statutory mortgage over the *Soeraya Emas* at the port of registry of Port Kelang, Malaysia. The date of execution and the date of registration of the first priority statutory mortgage were not given in the statement of claim. However from the documents subsequently filed in these proceedings it appears that the plaintiffs executed a bill of sale of the *Soeraya Emas,* under its former name *Kolim Duta* in favour of Perkapalan Emas on 8 October 1985. Perkapalan Emas then executed a mortgage in the statutory form,

also on 8 October 1985, but this was not registered at the then port of registry of Port Kelang until 18 December 1985 and eventually transferred to the new port of registry of the *Soeraya Emas* namely Kuching on 26 October 1987. The deed of covenant above referred to was not registered at any port of registry but it was registered with the Registrar of Companies Kuala Lumpur apparently on 13 January 1986. The fact of registration is certified by the Registrar of Companies by his certificate dated 29 January 1986.

The plaintiffs also pleaded that the *Soeraya Emas* was arrested by the Sheriff in the Singapore High Court Admiralty Suit *In Rem* No. 245 of 1988 on 24 January 1989 and that she was still under arrest when "these proceedings" were commenced on 14 February 1989. The plaintiffs further pleaded that Perkapalan Emas were in default of their monthly instalments above referred to since September 1988 and that up to 31 January 1989 the amounts outstanding to them of the purchase price together with interest stood at $559,221.41 (paras. 6 to 8 of the statement of claim). Accordingly they claimed a declaration of the validity of the mortgage, the sum of $497,500 subsequently amended to $559,221.41, interest thereon at the rate of 1.5% per month from 1 February 1989 to the date of full realization, costs on a full indemnity basis including but not limited to costs incurred by the plaintiffs on the recovery of the sum owing by Perkapalan Emas on a solicitor and client basis and such further or other relief as the Court deems fit.

I too close have refrained so far from referring to Perkapalan Emas as the defendants having regard to the unusual way in which the party sued had been named in the writ. In an admiralty action *in rem* the defendants are either "the owners of the ship or vessel XYZ" or "the owners of the cargo laden/lately laden on the ship or vessel XYZ" as is appropriate. To include "all other persons interested" in naming the defendants as was done in this case can only lead to confusion especially when appearance is entered "for the defendants" again as was done in this case. Of course the writ must be addressed not only to the owners of the ship or vessel or to the owners of the cargo laden/lately laden on the ship or vessel but also to all persons interested in the ship or vessel or cargo as the case may be. (See The *"O. Sambaur" No. 1 and No. 2 Winmore Corporation Ltd. v. The Owner of L.S.T. "O. Sambaur"* [1958] MLJ 85 and 87 respectively). However that may be there is no doubt that in this case Perkapalan Emas are the only defendants and that the appearance that was entered on 21 March 1989 was entered on their behalf. Hereafter when I refer to the "defendants" I refer to Perkapalan Emas and to no other.

The *Soeraya Emas* was not arrested in "these proceedings". The writ with the statement of claim endorsed on it was served on her on 20 February 1989 whilst she was still under arrest in Admiralty Suit *In Rem* No. 245 of 1988 (*In Rem* No. 245) to which I now turn. It will be remembered that the plaintiffs referred to the arrest of the *Soeraya Emas* in *In Rem* No. 245 in para. 6 of their statement of claim.

The writ, in "*In Rem* No. 245" was filed by Singapore Slipway & Engineering Co. (Pte) Ltd. (Singapore Slipway) on 16 August 1988 against "the owners of and or other persons interested in the ship or vessel *"Soeraya Emas"*, that is to say, against the defendants. It was not until 23 January 1989 that the warrant of arrest was applied for. It was granted on the same day and the "*Soeraya Emas*" was arrested by service of the warrant of arrest by a bailiff on her at 4.50 p.m. that day whilst she was lying at the Western Petroleum Anchorage.

Singapore Slipway's claim was for work done and materials supplied for repairs to the *Soeraya Emas*. Such claims which fall under s. 3(1)(d) and/or (m) of the High Court (Admiralty Jurisdiction) Act (Cap 123) (the Act) can be brought by an action *in rem* against that ship provided the requirements of s. 4(4)(a) of the Act are satisfied. It appears they were.

Following the arrest of the *Soeraya Emas* in *In Rem* No. 245 several other claimants came forward to assert their claims against the *Soeraya Emas*. They did this in the usual way in admiralty proceedings, firstly by lodging a caveat against the release of the *Soeraya Emas* and then following it up by applying to Court for leave to intervene under O. 70 r. 16 of the Rules of the Supreme Court (RSC). I shall refer to O. 70 r. 16 of the RCS in detail later. For present purposes I need to refer only to three of these claimants.

The plaintiffs claimed an interest as mortgagees of the *Soeraya Emas*, and were given leave to intervene and enter an appearance and duly entered an appearance on 9 February 1989. Similarly Inter Maritime Management Sdn. Bhd. (Inter Maritime), (the claimants) claimed an interest in the *Soeraya Emas* for having disbursed various expenses on behalf of the defendants in respect of the *Soeraya Emas* including crew's wages, bunkers and repairs, were given leave to intervene and enter an appearance and duly entered an appearance on 27 February 1989. Hang Sing Machinery & Shipping Pte Ltd (Hang Sing) claimed an interest in the *Soeraya Emas* for having supplied goods and materials for services rendered to the *Soeraya Emas* and for charges and dues incurred in respect of the *Soeraya Emas* at the request of the defendants as their servants or agents at the port of Singapore during the period August 1987 to January 1989, were given leave to intervene and enter an appearance and duly entered an appearance on 3 March 1989.

The defendants themselves entered an appearance on 10 February 1989. It was said by A.L. Smith LJ in *The Gemma* [1899] p. 285 at 292 that there are three reasons for the appearance in an action *in rem*, "first, to release the ship, so that it may go on trading for the owner; secondly, to contest the plaintiffs' allegations that the ship had been in default; and, thirdly, in order to prevent its being sold". However the defendants after entering an appearance did not attempt to do any one of these things. It may well be asked why then did the defendants enter an appearance. Be that as it may they stood by and failed to raise any defence when Singapore Slipway applied for summary judgment under O. 14 of the RSC Accordingly Singapore Slipway was given leave to enter judgment on 20 March 1989 for S$268,130 together with interest thereon at 8% per annum from 16 August 1988 to 20 March 1989 and $700 costs. Judgment was duly entered on 8 April 1989.

On 4 March 1989 Singapore Slipway obtained an order of the Court **by consent** of the defendants and those interveners who had entered an appearance in "*In Rem* No. 245" but not, it would appear, of Inter Maritime whose consent is not endorsed on the draft order (*inter alia*) that Singapore Slipway be at liberty to make payments to the crew of the *Soeraya Emas* and repatriate them, these expenses forming part of the Sheriff's expenses; that the *Soeraya Emas* be appraised and sold by the Sheriff free and clear of all liens, charges and encumbrances; that the proceeds of sale if the same shall exceed S$250,000 be placed on deposit with a bank or finance company in Singapore; that the Sheriff give public notice of sale; that the order of priority of claims shall not be determined until after the expiration of 30 days beginning with the day on which the proceeds of sale are paid into Court and, that any party to this action (*In Rem* 245) or any other action *in rem* against the *Soeraya Emas* or the proceeds of sale thereof may apply to Court to extend the time for the determination of the order of priority of claims.

The *Soeraya Emas* was sold for S$1.04 million on 8 April 1989. Singapore Slipway realising that their claim ranked low in the order of priority of claims did not apply for the determination of the order of priority of claims. Instead on 26 May 1989 they obtained an order from the Court for the payment of the Sheriff's expenses and such other expenses which by agreement

or by orders of Court were to be treated as Sheriff's expenses as being of first priority ranking and for the relative priorities of all other claims against the proceeds of sale of the *Soeraya Emas* to be reserved.

I return to "these proceedings". It will be remembered that the writ with a statement of claim endorsed thereon was filed on 14 February 1989 and served on the *Soeraya Emas* on 20 February 1989 whilst she was still under arrest in "*In Rem* 245". An amendment to the amount claimed was made on 28 February 1989. On 10 March 1989 yet another amendment, this time to the writ, by adding the port of registry in the address to the writ which was omitted was made.

Singapore Slipway having obtained leave to intervene entered an appearance as interveners on 11 March 1989. The defendants entered an appearance shortly thereafter on 21 March 1989. On 24 April 1989 the plaintiffs with the leave of the Court made substantial amendments to their claims. They now claimed $624,721.35 and interest at 1.5% per month on the sum of $497,000. They further claimed interest at 8% per annum on the sum of $64,499.94 from the date of issuance of the summons to date of judgment. The amended statement of claim was served on the defendants and Singapore Slipway who had entered an appearance as interveners in "these proceedings".

On 25 April 1989 the plaintiffs applied for summary judgment under O. 14 of the R.S.C. in terms of their lastly amended statement of claim. One must assume that when a defendant enters an appearance in an *in rem* action he does so for one of the three reasons stated by A.L. Smith LJ in *The Gemma* to which I have already referred. The *Soeraya Emas* was not arrested in "these proceedings". So one must assume that the defendants entered an appearance to contest the plaintiff's mortgage claim. However when the plaintiffs' application for summary judgment was heard by the learned Assistant Registrar on 21 July 1989 the defendants consented to judgment of the money claimed without raising any defences by affidavit. The only affidavit filed by the plaintiffs in support of their application for summary judgment was in the prescribed form stating a belief that the defendants are justly and truly indebted to the plaintiffs, that there was no defence and that an appearance had been entered for the purposes of delay. The order of Court dated 21 July 1989 ordered that the mortgage dated 16 December 1985 be declared valid and by consent gave liberty to the plaintiffs to enter final judgment for the money claim made by the lastly amended statement of claim. Final judgment has not been entered.

Although this has not been said by Counsel appearing for Inter Maritime in the applications before me I cannot help feeling that there is some duplicity on the part of the defendants. Why else would they enter an appearance and not make the slightest effort to contest the mortgage. The admiralty procedure for entering a judgment in default of appearance as provided by O. 70 r. 20(3) and in default of defence as provided by O. 70 r. 20(4) is well understood by admiralty practitioners. They are designed to protect the interests of all persons having an interest in the *res*. Furthermore such a judgment will undoubtedly be a judgment *in rem* against the *res*. A mortgage claim in an action *in rem* which falls under ss. 3(1)(c) and 4(2) of the Act, is a secured claim and ranks high in the order of priority of claims.

Having said that it must readily be conceded that as a matter of jurisdiction the O. 14 procedure applies to admiralty actions *in rem*. This was so held in *The August 8* [1983] 2 A.C. 450. However the consequences or the ramifications which flow from entering a summary judgment under the O. 14 procedure in an admiralty action *in rem* were not considered in *The August*

8 or in any other reported case in Singapore or anywhere else. It must be remembered that the Privy Council was solely concerned with the question of jurisdiction and that they founded this part of their judgment on the interpretation of O. 14 of the RSC. Lord Brandon in delivering the judgment of the Privy Council said at pp. 452/453 on the report:

> Their Lordships are not concerned in this appeal with certain matters which either were raised, or else might properly have been raised, at earlier stages of the proceedings. In particular, subject to the question of jurisdiction to be referred to shortly, their Lordships are not concerned with the correctness of the Registrar's order dated 10 May 1978, either with regard to the condition for leave to defend imposed by it, or with regard to the amount for which, in default of compliance by the shipowners with that condition, the master was given leave to enter judgment against them. The sole question with which their Lordships are concerned in this appeal, as was the Court of Appeal in Singapore in the appeal to it from the order of Choor Singh J, is one of jurisdiction and it is this: by the law of Singapore, is a plaintiff in an admiralty action *in rem* brought by him in the High Court entitled, after he was served a statement of claim on the owners of the property proceeded against and they have entered an appearance in the action, to avail himself of the provisions of O. 14 of the Rules of the Supreme Court 1970, in order to obtain, if he can, a summary judgment against such owners?

And at p. 454 he said:

> It has not been suggested, and could not sensibly be suggested, that the master's action in the present case, being an admiralty action *in rem* in respect of pecuniary claims included in the Admiralty jurisdiction of the High Court, falls within any of the exceptions in subpara. (a) and (b) of para. (2), or in para. (3), of O. 14, r. 1 referred to above, (These exceptions were abrogated by amendments to the RSC which came into effect on 1 August 1991 - See SL 30/91 No. S281/91; the rule is otherwise unaffected). That being so, it appears to their Lordships to be clear beyond doubt that, on the true construction of O. 14 of the Rules of the Supreme Court 1970, an admiralty action *in rem* such as that brought by the master in the present case, as well as an admiralty action *in personam*, is a kind of action in which a plaintiff is entitled to avail himself of the provisions of O. 14, and in which the Court, if satisfied with regard to the merits of the case, has power to give him a summary judgment under the order.

I shall have to return to *The August 8* again later.

The plaintiffs, then, having obtained a consent judgment of the amounts claimed under the mortgage of the *Soeraya Emas* to them by the O. 14 procedure applied on 10 August 1989 by motion in *In Rem* 245 that their claim ranks above all other claims and for payment out.

Inter Maritime who it will be remembered was one of the several interveners who had entered an appearance in *In Rem* 245, immediately responded by obtaining leave to intervene and enter an appearance in "these proceedings" which they duly did on 31 August 1989. They then followed up with an application on 6 September 1989 wherein they sought the following orders:

(1) that the whole of the order of Court made herein (in "these proceedings") on 21 July 1989 and any judgment entered pursuant to the said order be set aside;

(2) additionally or alternatively for a declaration that the order of Court made on 21 July 1989 shall not be binding on the applicant interveners;

By tacit agreement the plaintiffs stayed their motion for the determination of the priority of their claim and for payment out until Inter Maritime's application above referred to was heard. On 3 April 1990, the learned Assistant Registrar who heard Inter Maritime's application ruled on a preliminary objection taken by plaintiffs' Counsel that the Court had no jurisdiction to

set aside a consent judgment and further that the interveners (Inter Maritime) had no *locus standi* in "these proceedings". Thus the first prayer of Inter Maritime's application filed on 6 September 1989 was disposed of. Inter Maritime filed notice of appeal on 9 April 1990. The second prayer of Inter Maritime's application was adjourned to a date to be fixed. It was not heard until 11 April 1991 by the same Assistant Registrar who had dismissed Inter Maritime's first prayer. He dismissed the second prayer as well. Inter Maritime filed notice of appeal on 12 April 1991.

On 12 July 1991 Inter Maritime moved the Court in *In Rem* 245 for an order that the plaintiffs' motion for the determination of the priority of their claim and for payment out be stayed pending their appeal against the two decisions of the Assistant Registrar in "these proceedings". The Judge granted the order and adjourned the plaintiffs' motion for the determination of the priority of their claim and for payment out *sine die* with liberty to restore.

There is another aspect of the judgment in *The August 8* to which I must now refer. At p. 456 of the judgment Lord Brandon said:

> In their Lordships' opinion there is another ground additional to the other grounds already dealt with by them in this judgment, and not adverted to at any time in the previous course of the proceedings, on which the shipowners' appeal is bound to fail. By the law of England, once a defendant in an admiralty action *in rem* has entered an appearance in such action, he has submitted himself personally to the jurisdiction of the English Admiralty Court, and the result of that is that, from then on, the action continues against him not only as an action *in rem* but also as an action *in personam: The Gemma* [1899] p.285 per A.L. Smith LJ There is no reason to suppose that the admiralty law of Singapore differs from the Admiralty Law of England so far as this important principle is concerned. On the contrary there is every reason to suppose that it is the same. If then that principle is applied in the present case, the situation is that, from the time when the shipowners entered an appearance in the master's action, as they did on 2 February 1978, the action continued not only *in rem* against the property proceeded against, namely, the ship, but also in *personam* against the shipowners themselves. It follows that even if, contrary to the views which their Lordships have earlier expressed, an admiralty action *in rem* were excluded from the scope of O. 14, it would in any case be impossible to regard an admiralty action *in personam* as similarly excluded. In so far therefore as, from the time of the shipowners' appearance, the master's action continued against them as an action *in personam* as well as an action *in rem*, it was clearly a kind of action to which O. 14 applied.

In stating the principle Lord Brandon relied on *The Gemma* which in turn was based on the judgment of Jeune J in *The Dictator* [1892] p. 304.

The question that arose in *The Dictator* was whether a shipowner in an action *in rem* for salvage who had undertaken through his solicitors to enter an appearance and to put in bail whenever required in an amount not exceeding five thousand pounds in consequence of which the ship was not arrested was personally liable to the full extent of the judgment finally entered and which exceeded the five thousand pounds and whether execution can be issued against the shipowner. Jeune J took the opportunity to review all the earlier cases and the conflicting judgments that existed until then almost all of which concerned the enforcement of the judgment. At p. 320 of the report he expressed himself thus:

> It may well be that, if the owners do not appear, the action only enforces that lien on the *res*, but that, when they do, the action *in rem* not only determines the amount of the liability, and in default of payment enforces it on the *res*, but is also a means of enforcing against the appearing owners, if they could have been made personally liable in the Admiralty Court, the complete claim of the plaintiff so far as the owners are liable to meet it. It appears to me consonant with common sense that if the owners have had no personal notice, and are not,

save in the sense indicated in *The Parlement Belge* (5 P.D. 197) before the Court, the effect of its judgment should be limited to the *res* in its hand, **but that if the owners appear to contest or reduce their liability, they should be placed in the same position as if they had been brought before the Court by a personal notice.** (My emphasis)

A similar question arose in *The Gemma* also a case concerning the enforcement of the judgment. I need only set out the head note. It reads:

A collision occurred in the river Thames between a British and a foreign vessel. The owners of the British vessel commenced an action *in rem* and arrested the foreign vessel, the owners of which, domiciled abroad, appeared, and, having put in bail for the full value of the vessel and her freight, she was released. The foreign vessel was subsequently found alone to blame, and the decree in the usual form, in the case of owners who have appeared, condemned the defendants and their bail in damages and costs. The damages proved to be in excess of the amount of the bail, and the plaintiffs, in respect of this balance, sued out a writ of *fieri facias* (seizure and sale) under which the foreign vessel was seized. On application to the Court the sheriff was ordered to withdraw:

Held by the Court of Appeal (A.L. Smith and Vaughan Williams LJJ), reversing the decision of Bucknill J, that the owners of the foreign vessel had, **by appearing, rendered themselves personally liable,** and, therefore, payment of the balance could be enforced under s. 15 of 24 Vict. c.10 by a writ of *fieri facias* against any of their goods and chattels, including the released vessel, within the jurisdiction. (My emphasis)

The Dictator [1892] p. 304, held applicable, approved and followed.

The principle has been clearly established but it will be noted that Lord Brandon in *The August 8* was concerned to emphasise by stating it more than once in the passage I have quoted above that the action continues against him (the shipowner who has entered an appearance) not only as an action *in rem* but also as an action *in personam*. I apprehended that what Lord Brandon was careful to preserve was that an admiralty action *in rem* did not cease to be an admiralty action *in rem* simply because the defendant shipowner had entered an appearance. The following words of his judgment bear repeating to which I give emphasis: **"the action continued not only *in rem* against the property proceeded against, namely, the ship, but also *in personam* against the shipowners themselves."**

I further apprehended that the importance of the judgment in *The Gemma* and the combined effect of the judgments in *The Dictator* and *The August 8* is that when a shipowner defendant enters an appearance in an admiralty action *in rem* he does so for one or all of the three reasons referred to by A.L. Smith LJ in *The Gemma*. If he does not dispute the claim and that claim or the totality of the claims against his ship exceeds the value of his ship it would be most inadvisable for him to enter an appearance as by doing so he makes himself **personally** liable to the full extent of the judgment or judgments entered after appearance. If he does not enter an appearance and allows the admiralty action *in rem* to proceed in default of appearance he cannot be made personally liable at all as the claims are not enforceable only against the ship or the proceeds of sale of that ship.

In my view the learned Assistant Registrar failed to appreciate this important principle and the refinement given to it by Lord Brandon in *The August 8*. Had he appreciated it he would have not fallen into the error of applying the principles applicable solely to the setting aside of consent judgments in non-admiralty civil actions and confusing the standing of Inter Maritime as intervener in "these proceedings". In so far as Inter Maritime were concerned "these proceedings" were and still are an admiralty action *in rem* but in so far as the defendants are concerned by reason of their appearance and albeit by their consent a judgment has been entered against them for which they, Perkapalan Emas are also personally liable.

This being so the order of Court dated 21 July 1989 giving the plaintiffs leave to enter final judgment against the defendants binds only the plaintiffs and the defendants, Perkapalan Emas. The order being made with the consent of the defendants cannot be set aside by the defendants. In such a situation the cases relied on by the plaintiffs such as *Ainsworth v. Wilding* [1896] 1 Ch 673 and *Emeris v. Woodward* [1898] Ch 185 would apply. The Court would not have the jurisdiction to set aside the consent judgment. The same may be true of Singapore Slipway, an intervener, who entered an appearance in "these proceedings" had they applied to set aside the order of Court dated 21 July 1989 since they appeared at the O. 14 hearing, raised no defences and consented. But Inter Maritime had not then entered upon "these proceedings" and could not therefore have consented. I am not persuaded by plaintiffs' Counsel's argument that had Inter Maritime been vigilant to protect their interests against the *Soeraya Emas* they would have intervened in "these proceedings" before 21 July 1989 and by not doing so had deliberately allowed the order to have been made. Accordingly it was too late for them now to apply as an interested party to set aside the order of Court of 21 July 1989.

Since in my view "these proceedings" still remain an admiralty action *in rem vis a vis* all persons having an interest in the *Soeraya Emas* except the defendants the right to intervene must be governed by O. 70 r. 16 of the RSC. Subrule (1) which is the substantive rule reads as follows:

> Where property against an action *in rem* is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has an interest in that property or money but who is not a defendant to the action may, with leave of the Court intervene in the action.

Subrule (2) provides that the application is made *ex parte*; subrule (3) that when leave to intervene is granted the intervener must enter an appearance; and subrule (4) that the Court may order the intervener to serve on every other party to the action such pleadings as may be specified.

The right to intervene as provided by this rule is consonant with the nature of admiralty proceedings *in rem* since a judgment entered *in rem* binds not only the defendant but all other persons who have an interest in the *res*. The significant words in O. 70 r. 16(1) are, "a person who has an interest in that property". Such interest need not and generally does not have anything to do with the original subject matter of the action, or the matter in dispute which are essential requirements in non-admiralty or ordinary civil actions. It was held in *The Dowthorpe* [1843] 2 W. ROB 73 (166 E R 682) that a potential right to receive the monies would be a sufficient interest in the property to the right to intervene and protect that interest in the property or the proceeds of sale.

A person who has been given leave to intervene in an admiralty action *in rem* does not prosecute his claim in that action. He protects his interest in the property by defending the action *in rem*. In doing so he will be permitted to set up such defences which the owners of the ship could have set up had they defended the action. See *The Byzantion* [1922] 16 Asp 19. But where as in *The Lord Strathcona* [1925] p.143 the interest of the interveners, who were the charterers of the vessel, was whether the sale by the Court would be subject to their charter it was held that the charterers, interveners, had no *locus standi* to challenge the validity of the mortgage although they were entitled to be heard on the question of whether the plaintiffs ought to be restrained from exercising their rights in such a way as to interfere with the intervener's contractual rights under the charterparty.

In "these proceedings", Inter Maritime intend to challenge the validity of the mortgage on which the plaintiffs' claim against the *Soeraya Emas* is founded. They have shown on affidavit certain features over the documentation of the mortgage which I have set out at the beginning of this judgment. There can be no doubt that *prima facie* such questions as to whether the security documents were registered with the Registrar of Companies, whether the document sued on is the statutory mortgage or a collateral document, cast doubts on the validity of the mortgage or at least call for investigation without which the mortgage could not be declared valid as it was by the order of Court dated 21 July 1989. Furthermore para. 5 of the statement of claim lacks particularly of the date and execution of the statutory mortgage and the date of registration at the port of registry.

At this stage I need only to be satisfied that the contentions of Inter Maritime have merit. I am so satisfied. Thus in my view they have *locus standi* in "these proceedings" for if they succeed in their defences of challenging the validity of the mortgage their claim will not rank after the plaintiffs' claim with the result that they have greater certainty of having their claim met in full out of the proceeds of sale, provided of course they can prove their claim, and not have to make do with what is left after the plaintiffs have their claim paid in full and rank *pari passu* with the other claimants having the same priority as them.

Furthermore these same defences were open to the defendants but having entered an appearance chose not to take them up to contest the plaintiffs' claim. Accordingly the merits of the plaintiffs' claim has not been gone into. The investigation into the merits of a plaintiff's claim when he chooses to proceed by way of a summary judgment under O. 14 when a defendant in an admiralty action *in rem* has entered as appearance is in my view essential and is within the spirit of entering default judgments as provided by O. 70 r. 20(3) and (4). I think I find support for this view in the judgment of Lord Brandon in *The August 8* at p. 454 of the report which I have already quoted above. I would only emphasise the words - **"if satisfied with regard to the merits of the case"** which appear at the end of the passage quoted.

Additionally on the facts and circumstances of "these proceedings" natural justice also demands that Inter Maritime should be given an opportunity to be heard. In the words of Sheen J in *The Eternal Peace* [1985] 1 LLLR 136 at 139:

> ...natural justice demands that, if there is any defence to the plaintiffs' claim, the bank (the interveners) ought to be allowed to raise it, provided that the plaintiffs are not prejudiced thereby.

Certainly in "these proceedings" Inter Maritime have defences to the plaintiffs' claim and should be allowed to raise them and I do not see how the plaintiffs can be prejudiced thereby.

Lastly I am convinced that the opening up of O. 14 proceedings in admiralty *in rem* actions can if not watched carefully lead to abuse. I am not saying that there was anything untoward in "these proceedings". But one can well imagine an unsrcupulous shipowner colluding with the master and crew so that the latter would assert substantial claims for unpaid wages against the vessel which the shipowner would then admit and thereby defeat the claim of other claimants. Fortunately this form of abuse is greatly minimised by the recent amendments to the RSC. It will be noted that the new r. 2(8) of O. 14 provides that an affidavit or affidavits for the purposes of this rule must contain all necessary evidence in support of or in opposition (as the case may be) to the claim.

For all these reasons I allow the appeals of Inter Maritime and order that the whole of the order of Court made in "these proceedings" on 21 July 1989 and any judgment entered pursuant thereto be set aside. Having set aside the order of Court dated 21 July 1989 it is not necessary to grant the declaration sought although in my view they would be entitled to it.

For the proper dispatch of "these proceedings" I direct that Inter Maritime file a defence to the plaintiffs' claim within 21 days of today and serve every other party to "these proceedings".

Inter Maritime are entitled to the costs of these appeals and to their costs before the Assistant Registrar. They are awarded the same.

Also found at [1991] 3 CLJ 2973